

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM D. DOWNES, JR.,	§
	§ No. 267, 2006
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 9408020702
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 18, 2006
Decided: August 15, 2006

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 15th day of August 2006, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, William D. Downes, Jr., filed an appeal from the Superior Court's May 8, 2006 order denying his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of

Downes' opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) In February 1995, Downes was found guilty by a Superior Court jury of Attempted Murder in the First Degree, two counts of Possession of a Firearm During the Commission of a Felony, Burglary in the First Degree, Reckless Endangering in the First Degree and Assault in the First Degree. He was sentenced to life imprisonment plus 36 years at Level V, to be followed by probation. This Court affirmed Downes' convictions and sentences on direct appeal.²

(3) In this appeal, Downes claims that the trial judge had a personal interest in the outcome of his criminal trial, resulting in a lowering of the State's burden of proof. Downes states that, by accident, he learned from a fellow prisoner that the trial judge and another Superior Court judge frequented a place of business owned by the family of the murder victim and had a personal relationship with that family. In support of his claim, Downes attaches an affidavit signed by the prisoner.

(4) Downes' convictions became final in 1996, ten years before his second motion for postconviction relief was filed. Moreover, Downes failed to assert the claim he advances in this proceeding at trial, on direct appeal or

¹ Supr. Ct. R. 25(a).

² *Downes v. State*, Del. Supr., No. 151, 1995, Hartnett, J. (Mar. 13, 1996).

in his first postconviction motion. As such, the claim is both time-barred³ and procedurally barred⁴ unless Downes can demonstrate either that the Superior Court lacked jurisdiction over the charges against him or that there is a colorable claim of a miscarriage of justice because of a constitutional violation.⁵

(5) The affidavit of a prisoner should be viewed with great caution.⁶ The affidavit in this case is particularly questionable because it is based solely upon the “belief” of the prisoner that a personal relationship between the judges and the victim’s family existed. Even if the affidavit were wholly trustworthy, a personal relationship between the Superior Court judge and the victim’s family, in and of itself, is insufficient to establish a disqualifying bias.⁷ Thus, because Downes has failed to demonstrate that a miscarriage of justice exempts him from the procedural bars of Rule 61,⁸ we find that the Superior Court properly denied his claim.

(6) It is manifest on the face of Downes’ opening brief that this appeal is without merit because the issues presented on appeal are controlled

³ Super. Ct. Crim. R. 61(i) (1).

⁴ Super. Ct. Crim. R. 61(i) (2) and (3).

⁵ Super. Ct. Crim. R. 61(i) (5).

⁶ *Johnson v. State*, 410 A.2d 1014, 1015 (Del. 1980).

⁷ *CM & M Group, Inc. v. Carroll*, 453 A.2d 788, 794-95 (Del. 1982).

⁸ Super. Ct. Crim. R. 61(i) (5).

by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice